IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 75-647

FOOD HANDLERS LOCAL 425 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, et al.,
Petitioner,

vs.

VALMAC INDUSTRIES, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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INDEX

Cases Cited

Other Authorities

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Petitioner Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in the above case on July 29, 1975.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 519 F.2d 263. It is reproduced in the Appendix herein App. p. A-12.[1]

[1] All references to the Appendix filed herewith will be by the notation App. followed by pagination (pp. A- . . . .).

The pertinent District Court's Opinions are reproduced in the Appendix as follows:

July 12, 1974, Ruling of the Court (App. p. A-1);

August 1, 1974, Preliminary Injunction (App. p. A-8).

JURISDICTION

Following entry of the judgment of the Court of Appeals on July 29, 1975, Petitioner timely submitted a Petition for Rehearing and Suggestion for Rehearing En Banc. The Petition and Suggestion were denied upon August 20, 1975. (App., p. A-22). This petition for certiorari is filed within 90 days of the latter date. This Court's jurisdiction is invoked pursuant to Title 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether a federal court can properly issue an injunction against a peaceful work stoppage despite the prohibitions of the Norris-LaGuardia Act, where the work stoppage is *not* "over a grievance which the (employer and union) were bound to arbitrate . . .," and where issuance of the injunction does not further the federal labor policy favoring resolution of disputes by final and binding arbitration.[2]

STATUTORY PROVISIONS

The instant case involves Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, and § 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185(a). These provisions are set forth at App. pp. A-23-25.

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[2] *The Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970) at 254.

STATEMENT OF THE CASE

Jurisdiction

Respondent Valmac Industries, Inc. brought this action under § 301 of the Labor Management Relations Act, as amended, 29 U.S.C. § 185(a) against Petitioner Food Handlers Local 425 of the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO (hereinafter "Union") and others, seeking *inter alia* injunctive relief against picketing and the honoring of picket lines at its Waldron and Pine Bluff, Arkansas plants. Valmac's contention was that the picketing was in violation of "no strike" provisions contained in separate collective bargaining agreements in effect at Waldron and Pine Bluff.

STATEMENT OF FACTS

Union is and was, at all relevant times, exclusive collective bargaining representative of certain employee at Valmac's poultry-processing plants at Russellville, Dardanelle, Waldron and Pine Bluff, Arkansas. Each of the four plants was treated as a separate bargaining unit, and was, at all relevant times covered by a separate collective bargaining agreement. The collective bargaining agreements covering the Russellville and Dardanelle plants were negotiated simultaneously, and expired simultaneously upon June 29, 1974, without agreement between Valmac and Union upon a new contract.

On July 1 and 2, 1974, Russellville and Dardanelle employees picketed at Valmac's Waldron and Pine Bluff plants, with signs reading:

> "Valmac Industries, Inc."
> Russellville and Dardanelle,
> Arkansas on strike
> Foodhandlers Local Union 425.

Employees at the Waldron and Pine Bluff plants honored the Russellville-Dardanelle picket line, declining to work on July 1 and 2. The collective bargaining agreements then effective at Waldron and Pine Bluff contained, at Article XV, the following language:

> "It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union."

On July 2, 1974, Valmac filed in the trial court a complaint seeking injunction against picketing (and, logically, the honoring of picket lines) at its Waldron and Pine Bluff plants. The complaint alleged that the picketing and relating activity at Waldron and Pine Bluff violated Article XIV of the collective bargaining agreements applicable to those plants. Article XIV of the agreements provided, in pertinent part:

> During the whole period this Agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

The arbitration and grievance procedure set forth in the bargaining agreements covering the Waldron and Pine Bluff plants provided, at Article V, Step 4, as follows:

> The matter above described, *or any grievance complaint of the Company*, shall be submitted to an arbitrator mutually agreeable to the parties. If the parties cannot agree upon an arbitrator within five (5) days, the party requesting arbitration shall request a list of five (5) arbitrators from the Federal Mediation and Conciliation Service, from which the parties shall be appointed arbitrator. The arbitrator shall have authority only to interpret and apply the provisions of this Agreement, *and his written decision shall be final and binding on all parties*. (Emphasis added).

Valmac stipulated at hearing that it made no request for arbitration of the alleged contract violation at Waldron and Pine Bluff between July 1 and July 12, 1974. Nevertheless, on July 2, 1974, after unilateral hearing in the district court's chambers without notice to Union, the district court entered a preliminary injunction prohibiting picketing (and, consequently, the honoring of any picket line) at Waldron and Pine Bluff. App. p. A-5.

By letter dated July 13, 1974 (but delivered upon July 12), Valmac for the first time demanded arbitration of Union's alleged violation of the "no strike" language in the Waldron and Pine Bluff contracts.

The District Court's Decision

On July 12, 1974, the district court conducted a bilateral hearing concerning Valmac's Prayer for Injunction. Union agreed at the hearing to arbitration of the dispute concerning the "picket line clause" and "no strike" contract language. At the conclusion of the hearing, the district court concluded: there existed no grievance between Employer and Union concerning the Waldron and Pine Bluff plants, indeed, that "there is nothing between Union and Company to arbitrate as a grievance on either Waldron or Pine Bluff . . ." App. p. A-5. Nevertheless, finding that there was "substantial probability" that Valmac would be successful (in proving) at arbitration that Union had violated the "no strike" language in the Pine Bluff and Waldron

contracts, and citing *Boys Markets*,[3] the district court granted a preliminary injunction against further picketing.

But in prohibiting further picketing (and honoring of the picket line) at Waldron and Pine Bluff, the district court failed to require Valmac to honor its letter demanding final and binding arbitration of its claim that picketing at Waldron and Pine Bluff violated collective bargaining agreements in effect there. App. pp. A- . Thereafter, Valmac refused to honor its own demand to arbitrate its claim that Union had violated collective bargaining agreements at Waldron and Pine Bluff by picketing (and by employees' honoring the resulting picket lines) at Waldron and Pine Bluff, contending (as a basis for its refusal) that the district court had by its July 12, 1974 findings and consequent order "already decided" the issue of contract violation against Union.

THE PROCEEDINGS BELOW

Union appealed the District Court's grant of injunctive relief. On July 29, 1975, the Court of Appeals affirmed the trial court's issuance of a *Boys Markets* injunction, acknowledging a split of authority among the Circuits and adopting that line of authority which dispenses with the requirement that a work stoppage, to be enjoined, must be "over" a grievance which the parties were contractually bound to arbitrate. The decision of the Court of Appeals is, as we have said, appended at Appendix A, *infra*.

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[3] See fn. 2, *supra*.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Incorrectly Construed and Applied Federal Labor Policy in Conflict With This Court's Holding in Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970).

In *The Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), the United States Supreme Court "re-examine(d) (its) holding in *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), that the anti-injunction provisions of the Norris-LaGuardia Act[4] precludes a federal district court from enjoining a strike in breach of a no-strike obligation under a collective bargaining agreement, even though that agreement contains provisions, enforceable under § 301(a) of the Labor Management Relations Act, 1947, for binding arbitration of the grievance dispute concerning which the strike was called." *Id.* at 237-38. Thus, in *Boys Markets*, this Court sought to accommodate Norris-LaGuardia's broad prohibition against federal court injunction of peaceful work stoppages with the federal labor policy "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements . . . ." *AVCO Corp. v. Local 787*, 459 F.2d 968, 970 (3rd Cir. 1972). Noting that the federal labor policy favoring final and binding arbitration of contract disputes must be served, this Court then reversed *Sinclair*, holding that strikes which result from grievances which are subject to final and binding arbitration under a collective bargaining agreement, and are in apparent violation

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment. . . ." 29 U.S.C. § 104.

of a contract no-strike clause, may be enjoined pending arbitration. *Boys Markets, supra* at 253-55. The Court carefully characterized its holding as a "narrow" one, stating as follows:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. *When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike.* (Emphasis added). (Citing the Dissenting Opinion in *Sinclair; Boys Markets, supra* at 254.

The *Boys Markets* Court thus restricted its holding to a closely-defined factual situation: one where, in the context of a contractual no-strike obligation and a final and binding arbitration procedure, a union chooses to strike to force an employer to accede to the union position concerning an arbitral grievance rather than to submit the grievance to the contract arbitration procedure. The purpose of an injunction ending the Union's strike under such circumstances is to force the union back to the contract arbitration procedure as the favored means of resolving the grievance over which the union had struck.

Subsequent to *Boys Markets*, some lower courts have distorted and enlarged[5] this Court's explicit holding therein, authorizing injunctive relief against work stoppages *not* in support of and indeed unrelated to grievances or disputes subject to contractually final and binding arbitration. The instant case falls squarely within this latter category.

[5] Contrary to the assertion of Petitioner Employer in *Buffalo Forge Co. v. United States Steelworkers of America, AFL-CIO* (No. 75-339—application granted) this Court did not "enlarge" upon *Boys Markets* in *Gateway Coal Co. v. UMWA*, 414 U.S. 368 (1974). In that case, the Court simply determined whether the dispute which *caused* a work stoppage was arbitrable under contract arbitration machinery. This Court thus implicitly recognized and reinforced the *Boys Markets* requirement that a strike, to be enjoined, must be "*over* a grievance which the parties are contractually bound to arbitrate." (Emphasis added). See *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 at 331-32 (3rd Cir. 1974) (Hunter, Cir. Judge, dissenting).

The dispute which here caused the picketing and work stoppage at Waldron and Pine Bluff was *not* one subject to the arbitration procedure contained in contracts effective at those plants. The dispute arose at Dardanelle and Russellville, where contracts had expired. It was wholly economic in nature, consisting solely of the inability of Valmac and Union to agree upon new contract terms for Russellville and Dardanelle, and was not subject to final and binding arbitration. In short, the picketing and work stoppages at Waldron and Pine Bluff were not "over" a grievance which the parties were contractually bound to arbitrate. There was no compliance with the previously-discussed requirement defined by this Court in *Boys Markets*.

The injunction approved by the Eighth Circuit herein was similarly unrelated to and did not serve the federal labor policy "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements." *AVCO, supra*.

There was here, as the District Court found, no arbitrable grievance involved at Waldron and Pine Bluff at the time of the picketing and work stoppage there. There was, as the District Court found, *nothing* to arbitrate at those plants other than Valmac's claim that the picketing and work stoppages themselves violated contract "no strike" language. The issuance of an injunction against the picketing and work stoppage under such circumstances, rather than promoting federal policy favor-

ing final and binding arbitration, operated to discourage it. "Once the district court has issued its injunction, the employer will have everything he seeks, since the work stoppage will have been ended. As a result, he will no longer have anything to gain from arbitration. On the other hand, arbitration might conceivably be very costly to him, since once the merits of the issue are reached, he will always run some risk of losing and a defeat on the merits would cause the injunction to lapse, raising the possibility of a renewal of the work stoppage. Thus, the rational employer will (under such circumstances) not only avoid initiating arbitration, he will use every means at his disposal to delay it as long as possible." *NAPA Pittsburgh, Inc. v. Automotive Workers*, 502 F.2d 321 at 328 (3rd Cir. 1974) (Hunter, Cir. Judge dissenting).

Predictably, after obtaining an injunction by demanding arbitration of its claim that picketing and work stoppage at Waldron and Pine Bluff violated contractual no strike provisions, Valmac thereafter refused to arbitrate, and indeed was not ordered to do so until the Eighth Circuit so directed more than a year after the injunction issued. See App. pp. A-20-21.

In sum, the only effect of the injunction issued in the instant case was substantially to undermine Union's efforts to win economic concessions at Dardanelle and Russellville, where no contracts were in effect. The federal labor policy favoring resolution of disputes through final and binding arbitration was not served. It will almost always be so where courts do not adhere to the *Boys Markets* requirement that a work stoppage, to be enjoined, must be *over* a grievance which contracting parties are bound to arbitrate.[6] This result,

[6] See *Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO*, 468 F.2d 1372 at 1373 (5th Cir. 1972); *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 at 324-33 (3rd Cir. 1974) (Hunter, Cir. J., dissenting). See also Note, 88 Harv. L.Rev. 463, 466-70 (1974).

of course, flies in the very face of the purposes underlying the enactment of the Norris-LaGuardia Act: that of preserving from federal court intervention the working man's right to strike in support of demands for improved terms and conditions of employment. This fact—that Norris-LaGuardia is almost wholly undermined and that the federal labor policy favoring resolution of disputes through final and binding arbitration is not served—lies at the heart of our request for review of the Eighth Circuit's decision herein.

II. The Decision Below Reflects an Important Issue of Federal Labor Law Upon Which the Courts of Appeals Are in Direct and Unalterable Conflict.

There is an irreconcilable conflict between various courts of appeal upon the federal labor law issue here presented. Some have adhered strictly to the language and purposes contained and reflected in this Court's *Boys Markets* decision.[7] Other Circuits have, to the contrary, declined to follow the literal requirement set out in *Boys Markets* and have approved the issuance of injunctions against strikes or work stoppages not "over a grievance which the parties are contractually bound to arbitrate."[8] That the grant or denial of

[7] *Plain Dealer Publishing Co. v. Typographical Union No. 53, el al.*, — F.2d —, 90 LRRM 2110 (6th Cir. Aug. 15, 1975); *Hyster Co. v. Independent Towing & Lifting Machine Assoc.*, 519 F.2d 89 (7th Cir. 1975); *Buffalo Forge Co. v. United Steel Workers of America, AFL-CIO, et al.*, 517 F.2d 1207 (2nd Cir. 1975); *United States Steel Corp. v. United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975); *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO*, 468 F.2d 1372 (5th Cir. 1972). See also, e.g., *General Cable Corp. v. Intl. Brotherhood of Electrical Workers, Local Union 1644*, 331 F.Supp. 478 (D.Md. 1971); *Simplex Wire & Cable Co. v. Intl. Brotherhood of Electrical Workers, Local 2208*, 314 F.Supp. 885 (D.N.H. 1970).

[8] *Valmac Industries, Inc. v. Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975); *Island Creek Coal Co. v. UMWA*, 507 F.2d 650 (3rd Cir. 1975), cert. den. — U.S. — (Oct. 6, 1975); *Armco*

an injunction should depend solely upon a Court's geographical location is no small anomaly. Upon this basis, another petition has been granted by the Court in *Buffalo Forge Co. v. UMWA*, No. 75-339.

It is extraordinarily important that the conflict among the various Courts of Appeals be resolved. In those Circuits where *Boys Markets* is not followed, and when an employer may thus obtain an injunction against a strike or work stoppage not over a grievance which the parties are contractually bound to abritrate, the supposedly still viable prohibitions of Norris-LaGuardia are in fact totally inoperative. In those jurisdictions, as reflected in the instant case, an employer may simply allege that a work stoppage is a violation of a contractual "no strike" provision, demand arbitration of the resulting "dispute" and obtain (often *ex parte*) a restraining order and subsequent injunction against the work stoppage. This is often so even where, as in the instant case, applicable contracts contain clear, precise language (1) authorizing union picketing which is not "over" a contractually-arbitrable grievance at the picketing situs and (2) giving bargaining unit employees the right to honor picket lines erected for such purpose.[9] The fact, unfortunate but true, is that many federal judges continue to regard termination of work stoppages as per se de-

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Steel Corp. v. UMWA, 505 F.2d 1129 (4th Cir. 1974), cert. den. — U.S. — (Oct. 6, 1975); *Pilot Freight Carriers, Inc. v. Teamsters Local 391*, 497 F.2d 311 (4th Cir. 1974), cert. den. 419 U.S. 869 (1974); *Wilmington Shipping Co. v. Intl. Longshoremen's Assoc.*, — F.2d —, 86 LRRM 2846 (4th Cir. 1974), cert. den. 95 S.Ct. 498 (1974); *NAPA Pittsburgh, Inc. v. Automotive Employees Local Union 926*, 502 F.2d 321 (3rd Cir. 1974), cert. den. 419 US. 1049 (1974); *Monongahela Power Co. v. Intl. Brotherhood of Electrical Workers Local 2332*, 484 F.2d 1209 (4th Cir. 1973). See also *Barnard College v. Transport Workers Union*, 372 F.Supp. 211 (S.D.N.Y. 1974).

[9] "It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union."

sirable. Thus, in those jurisdictions which decline to follow *Boys Markets'* literal language, employers can use otherwise inapplicable "no strike" contract language in a "boot strapping" operation to obtain quick termination of work stoppages. The only effect of injunctions against work stoppages under such circumstances is to nullify employees' right to engage in peaceful strikes to improve their terms and conditions of employment. As previously stated, such injunctions do not serve the federal labor policy favoring final and binding arbitration of labor disputes. And as reflected by the volume of cases set forth in footnotes 7 and 8, *supra*, the problem is anything but uncommon. Unless the conflict is resolved, labor unrest can be the only long-range result.

CONCLUSION

For the foregoing reasons, we pray that this Petition for Certiorari be granted.

Respectfully submitted

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INDEX TO APPENDIX

(1) RULING OF DISTRICT JUDGE OREN HARRIS ON JULY 12, 1974

The Court: The Court's ready to rule.

In the first place, the Court obviously recognizes that a temporary or preliminary injunction as provided by Rule 65 of the Federal Rules of Civil Procedure and other provisions of law is an extraordinary remedy and should be granted only upon a substantial showing by the plaintiff that it is entitled to such drastic relief. This, of course, makes it very obvious that the burden is on the plaintiff.

[111] As it has been stated, there are certain factors that are necessary, and a showing must be made. This is well established in virtually all, if not all, of the circuits that a preliminary injunction, as an extraordinary remedy, may be granted when there are present factors governing the issue therefor, and generally there are four. (1) Whether the plaintiff has made a strong showing that it will likely prevail on the merits. (2) Whether the plaintiff showed irreparable injury in the absence of such relief. (3) Whether such relief will substantially harm the parties. Some of the courts have held on this factor it has to do with whether or not the defendant in the case would suffer a greater harm by the issuing of a preliminary injunction than would the party seeking the injunction. And the fourth factor which the courts have delineated is the fact that the public interest requires some action to be taken.

In addition to that, as the counsel for the defendants in this case rely upon the Boys Market case which has been referred to, I think it should be noted that this is also a **[112]** very unusual statement of the law by the Supreme Court of the United States because in adopting the rule of the dissenting opinion in the Sinclair case and one of the most extraordinary decisions in which the Court in this opinion, the Boys Market case, has complete change from the rule that is adopted in the Sinclair case

and made it very clear that conditions and circumstances as time goes along that the Court should reconsider its opinion in the Sinclair case and that that case should be dumped, which it was, but in doing so it adopted the dissenting opinion in the Sinclair case and quoted from the dissenting opinion as has been referred to here today, and, of course, that application of the law is whether or not the prohibitive injunction proceedings in the Norris-LaGuardia Act would prevent the District Court—prohibit the District Court from issuing an injunction, and the Supreme Court said the law now is, as it adopted, that notwithstanding the prohibitive provision of the Norris-LaGuardia Act that when these conditions are present as has been referred to, then an injunction would prevail **[113]** notwithstanding the Norris-LaGuardia Act. So, therefore, the Court must make a determination before an injunction can be issued, notwithstanding the Norris-LaGuardia Act. First, a strike is sought to be enjoined because it is over a grievance which both parties are contracturally bound to arbitrate. The Court would not be permitted to issue an injunction unless this fact is present and that it must first hold that the contract has the affect. The employer must be ordered to arbitrate as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must consider whether issuance of an injunction would be warranted under ordinary principles of equity, whether breaches are occurring and will continue, or have been threatened and will be committed, whether they have caused or will cause irreparable injury to the employer, and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Now, that is precisely taken from the factors which many, many courts have rendered as to whether the plaintiff shows irreparable injury **[114]** in the No. 2 factor referred to by the Court. And, No. 3, as to whether or not the other parties would be more affected than the party seeking the injunction. So the Supreme Court of the United States in adopting a contrary decision than was in the Sinclair case has reiterated and adopted the factors that are necessary for this extraordinary action to be taken, and, of course, places quite a responsibility on the Court in view of the fact that the Court has discretion whether it will issue an injunction in a matter of these kinds and must find these factors and elements present.

Now, in this case, as has been shown from this hearing, there was an agreement, as has been said, the agreement between the Valmac Industries, Inc., Russellville, Arkansas, and the Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America. This provision in this contract will expire, as has been said, on July 29th of this year. I believe that's the proper date. The contract with the Pine Bluff Local expires on October——

[115] Mr. Davis: Fine.

The Court: ——5. Article 5 provides a procedure for the appointment of stewards and for grievances, and it very clearly sets out the steps to be taken which leads to arbitration and requires arbitration. In Article 14, which is identical in both contracts with reference to Waldron and Pine Bluff, provides for a no-strike, no-lockout. "During the whole period this agreement is in effect, the company shall not lock out its employees and the union shall not authorize or sanction any strike, stoppage, slowdown, or suspension of work against the company except for failure of the other party to submit to the arbitration procedure as provided for in Article 5 of this agreement and only then upon 48 hours' written notice to the other party and the other party's continued failure to submit to arbitration." And then Article 15, as relied upon by defendants in this case as their right in the instant case, Article 15 authorizes picket lines. "It shall not be a violation of this agreement for an employee to refuse to pass **[116]** through a picket line authorized by this union." There is some ambiguity there as it applies to the whole contract when you consider four

separate and individual contracts by the particular union as applicable to four places, and the Court should very well take cognizance of the application of this provision. The Court can only interpret this to mean, it says by this union and between the plaintiff and the Waldron, Arkansas, plant, that it would be applicable, of course, to that plant. Now, the testimony here is virtually undisputed that there has been no grievance insofar as the Waldron or Pine Bluff Plants are concerned. Certainly there must be an issue here. There has been no contention that the company has failed to submit to the arbitration procedure, because, as has been said previously, there is nothing between the union and the company to arbitrate as a grievance on either Waldron or Pine Bluff; and, obviously, there have been no notices given to either party as required when the 48-hour written notice is given, because there was nothing to give them notice for. The testimony, in the opinion of the Court, has **[117]** been substantial in this case, not only as to the contracts involved in the two locations, but it's been substantial as to there would be irreparable harm that would come to the company at each of these plants if the injunction had not been issued. All be it, there is only a few days left in one of them, and so that being true insofar as that plant is concerned, the union in the Waldron Plant, of course, when the contract expires may proceed in regular order endeavoring to obtain what they claim and what they feel is their rights as employees of the company in bargaining and trying to arrive at some solution to the problem.

On the other hand, the other plant at Pine Bluff goes until October, that is a while longer, but not very long.

The Court can only conclude that in each of the plants there would be irreparable harm to the operation of the plant —provisions of the contract for no strike, and the Court can only conclude that there will be substantial harm done to if they were permitted in violation of the provisions to strike

[118] other parties, that has been very clear, including employees themselves.

I might interpolate here that I don't think I have ever seen a serious strike that didn't do harm and usually irreparable harm to those involved in the strike when the strike takes place. I don't think there is any question about it as to what will happen at the termination of these contracts with reference to bargaining for additional contract, that is something else, this Court is not involved in that at all.

As to whether or not the union would be harmed in the continuation of the injunction, there is no testimony that has been presented to the Court, and there is nothing here to indicate that there would be substantial harm done, and certainly nothing here to indicate that any harm, if there is any harm, that would be greater than the irreparable harm done to the plaintiff in the case with the continuation of the injunction.

As to the question of the plaintiff being successful on the merits of the case, with the testimony that is presented here, which is **[119]** not rebutted, the Court can only conclude at this point that there is substantial probability that from the record we have here that the plaintiff would be successful in its efforts in the case. That, together with the Boys Market case as has been referred to and which I have quoted from, it is quite apparent that this Court should continue the injunction insofar —the preliminary injunction insofar as applicable to the Waldron Plant and to the Pine Bluff Plant.

It would serve no purpose now for this Court to proceed to again analyze the testimony. You have heard the testimony presented from the witnesses here as well as the Court has heard it, and the record is quite replete. You talk about the Monongahelia case and the apparent conflict with the Fifth Circuit in Texas. The Court can see very well that there are distinguishing features involved in this case involved in the Texas case and the Virginia case. It is quite apparent that the

Monogahelia case was more in keeping with what has been happening insofar as this particular local is concerned. I'm not sure **[120]** that the Monongahelia case, however, that the people who were involved in making the contracts and represented the union individually themselves as they did here escorted the pickets over to the other place for the purpose of setting up picket lines and carrying their difficulties at the other plant over to the plant where the contract was still in force and effect. That seems to me begging the point. When you look at the facts in this case which makes it so clear and undisputed in accordance with the exhibits which have been presented here and the testimony, it's only clear that this strike at Russellville and Dardanelle by the same company and by the same people who participated in the negotiation of all the four contracts for the four complexes carried that part of the difficulties they were having in Russellville and Dardanelle over to the other plants where they were not having the troubles as yet. And, consequently, the Court feels that the preliminary temporary injunction in effect insofar as Waldron is concerned and the Pine Bluff complex will be continued. I have some **[121]** serious reservations about the provisions of this injunctive proceedings, however, as it applies to Russellville and Dardanelle. To be sure, there is some indication that some threats and intimidations and some actions have taken place that cannot be tolerated. There has been nothing, though, in this record or no testimony presented to this Court that could be considered substantial for this Court to use this extraordinary procedure to interfere with the situation regarding that complex. That does not mean to say that the Court would not hesitate to hear any facts that are presented and to consider any situation that might exist that would lead into actual facts where there appear to be harm, threats, intimidations, and such actions as throwing brick and putting nails out in the parking lots where the tires would be injured. That is no way for good citizens to act. There is nothing here to indicate that the union has had anything to do with such activity. Where there are problems develop, there is going

to be somebody—inevitably there will be somebody that is going to **[122]** overstep the limitation. Those, generally speaking, are the kind of situations that the local officers handle and not to call upon the courts to have to deal with them on an individual basis; but I would like to make it very clear, however, if this decision of the Court results in this kind of activity that is going to do substantial harm and interfere with the rights of other people in the destruction of property, I would unhesitatingly entertain further action in that regard. I would like to compliment those who feel that they were impelled, persuaded to overstep the rights and the fact that they have since this injunction has been entered without notice pursuant to the rule that according to the testimony here that that has not continued, and I think it borders on tragedy that you have to take this action by the Court to get people to do what's right in that regard. And even though I'm going to release the injunctive proceedings, Mr. Davis, that includes the actions insofar as this record is concerned applicable to the Russellville and Dardanelle complex, I do want to express **[123]** the hope that nothing as has been indicated happened at the outset with reference to these intolerable actions will occur again.

I believe that just about concludes, then, the decision of the Court in this matter, and you may proceed, Mr. Davis, to prepare the appropriate precedent in line with these comments, conclusions of the Court as to the applicable law, as well as to the facts as I have referred to developed during the course of this trial and submit it to Mr. Lavey for his comments and then to the Court.

Mr. Davis: Yes, sir.

The Court: Anything further, gentlemen?

Mr. Davis: Nothing further.

Mr. Lavey: Nothing further, Your Honor.

The Court: The Court will now be in recess.

(Whereupon, at 4:53 p.m., the Court is recessed.)

(2) **ORDER OF THE DISTRICT COURT ENTERED AUGUST 1, 1974**

Preliminary Injunction

(Filed in U. S. District Court August 1, 1974)

Pursuant to the preliminary injunction order of this Court entered in this case on the 2nd day of July, 1974, this cause came on to be heard on the 12th day of July, 1974, in the United States District Courtroom at Pine Bluff, Arkansas. The plaintiff was present represented by its Vice-President, Don Dalton, various other officials of the Company and its attorney, John A. Davis. The defendant Union was present by its President, Jerry McGehee, various other officials of the Union and its attorneys, John T. Lavey and William Babb. The individual defendants were present in person and represented by their attorneys, John T. Lavey and William Babb. All parties announced ready and this case was submitted upon the Complaint filed herein, the Preliminary Injunction issued on the 2nd day of July, 1974, the Motion to Dismiss Complaint for Injunction and to Dissolve Preliminary Injunction, together with Memorandum in support of same filed by counsel for defendants, the Trial Brief filed on behalf of the plaintiff, the exhibits introduced at the hearing for preliminary injunction, additional exhibits introduced at the hearing, stipulation of the parties testimony of Don Dalton, Charles Hottinger, Charles Rushing, Norbert Flusche and Bill Bollinger, on behalf of the plaintiff, argument of counsel and other facts and matters appearing before the Court, the Court being well and sufficiently advised finds:

1. This is an action for violation of a contract between an employer and a labor organization representing employes in an industry affecting commerce as defined by the Labor Management Relations Act and this Court has jurisdiction over the

subject matter and parties to this action by virtue of Section 301 of the Labor Management Relations Act.

2. The Court finds that the plaintiff and defendant Union are parties to four (4) separate collective bargaining agreements covering certain of the employees at the plaintiff's Russellville, Dardanelle, Pine Bluff and Waldron processing plants. The contracts covering the employees at Russellville and Dardanelle expired on June 29, 1974, and the Union is engaged in an economic strike at those plants, said strike commencing on the 1st day of July, 1974.

3. The Court further finds that on the same date the strike commenced at Russellville and Dardanelle, the defendants commenced or caused to be commenced picketing at the Pine Bluff and Waldron plants and the defendants, together with the employees of the Pine Bluff and Waldron plants engaged in concerted strike activity at those facilities. The Waldron contract is in full force and effect and does not expire, according to its terms, until July 29, 1974. The Pine Bluff contract is likewise in full force and effect and does not expire until the 5th day of October, 1974.

4. The Court further finds that the collective bargaining agreements covering the Pine Bluff and Waldron plants each contain a "no-strike" clause. The clauses in each of the contracts are identical and are numbered Article XIV in each of the contracts and read as follows:

> "During the whole period this agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown, or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this agreement, and only then after forty-eight (48) hours

written notice to the other party, and the other party's continued failure to submit to arbitration."

5. Both Waldron and Pine Bluff contracts also contain a provision for compulsory arbitration of grievances and such provision is found in Article V of each of the contracts and under Step 4—Arbitration read as follows:

"The matter above described, or any grievance complaint of the Company, shall be submitted to an arbitrator mutually agreeable to the parties. . . ."

6. The Court finds that based on the foregoing facts and the additional findings and conclusions of law stated orally by the Court at the conclusion of the hearing of this matter on July 12, 1974, which oral findings of fact, conclusions of law and statements of the Court are hereby incorporated into this order and made a part hereof by reference thereto, the Court finds that the Temporary Injunction entered by this Court Ex-Parte on the 2nd day of July, 1974, insofar as it enjoins and restrains the defendants from picketing plaintiff's processing plants at Pine Bluff and Waldron and from carrying on concerted strike activity at the Pine Bluff and Waldron processing plants should be continued in full force and effect during the period of time as provided by the contracts between the parties.

7. For the reasons stated orally by the Court at the conclusion of the hearing of this matter on July 12, the Court finds that the injunction against the defendants from threatening or committing acts of intimidation and violence against plaintiff's business property, officers, agents, employees or others desiring to do business with plaintiff and from otherwise interfering with the operation of the plaintiff's business should be terminated.

It Is, Therefore, by the Court Considered, Adjudged and Decreed that the defendants, their officers, agents, servants,

employees and attorneys, and all those persons in active concert or participation with them be, and they are hereby enjoined and restrained pursuant to Rule 65(b) from picketing plaintiff's processing plants at Pine Bluff, Arkansas, and Waldron, Arkansas, and from carrying on concerted strike activity at the Pine Bluff and Waldron processing plants in violation of the Article XIV of each of the contracts covering the employees of the Pine Bluff and Waldron plants.

It Is Furthered Ordered, Adjudged and Decreed that the temporary restraining order entered on the 2nd day of July, 1974, enjoining and restraining the defendants from threatening or committing acts of intimidation or violence is hereby dissolved.

Signed this 31st day of July, 1974.

/s/ OREN HARRIS
District Judge

(3) Ruling of the United States Court of Appeals for the Eighth Circuit Filed July 29, 1975

United States Court of Appeals
For the Eighth Circuit

No. 74-1660

Valmac Industries, Inc., Appellee, v. Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO; Jess Riley, Jerry McGee, Darlene Hartley, Bill Green, Benny Dollar and Sarah Carlisle, Appellants.	Appeal from the United States District Court for the Eastern District of Arkansas.

Submitted: February 13, 1975

Filed: July 29, 1975

Before Heaney and Webster, Circuit Judges, and Nangle, District Judge.*

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* The Honorable John F. Nangle, United States District Judge, Eastern District of Missouri, sitting by designation.

Webster, Circuit Judge.

In *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U.S. 235 (1970), the Supreme Court held that, notwithstanding the anti-injunction provisions of the Norris-LaGuardia Act,[1] under appropriate circumstances a federal court may enjoin a strike or work stoppage pending arbitration of a labor dispute arising under a collective bargaining agreement containing no-strike and arbitration clauses. In this appeal, we are asked to determine whether a *Boys Markets* injunction may be issued when the work stoppage occurred not as the result of an independent contract dispute but rather because one group of employees honored a union picket line established by another group of employees covered under a separate collective bargaining agreement. We also consider whether the company may obtain such an injunction without submitting the work stoppage issue to binding arbitration. The specific controversy before us arose from the following facts:

Valmac Industries, Inc. operates four poultry-processing plants, each in a different town in Arkansas. Each plant was governed by a separate collective bargaining agreement between Valmac and Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, the exclusive bargaining representative of certain employees at each plant.

Employees at the Valmac plants at Russellville and Dardanelle went on strike when both their collective bargaining agreements expired on June 29, 1974. On July 1 and 2, striking employees from those plants established picket lines

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[1] 29 U.S.C. § 104.

at Valmac's two other facilities in Waldron and Pine Bluff.[2] They carried picket signs that were informational in nature.[3]

The employees at the Waldron and Pine Bluff plants honored the picket lines and refused to work. Although the Waldron and Pine Bluff labor contracts which were then still in effect specifically permitted individual employees to honor authorized union picket lines,[4] these same collective bargaining agreements contained express no-strike clauses.[5] Proceeding on the theory that the resulting work stoppages at Waldron and Pine Bluff were in violation of such no-strike provisions, Valmac sought preliminary injunctive relief in the United States District Court for the Eastern District of Arkansas.[6]

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[2] Russellville and Dardanelle are in close proximity, though situated on opposite sides of the Arkansas river. Pine Bluff is approximately 125 miles away to the southeast, and Waldron approximately 60 miles to the southwest.

[3] The picket signs read:

"Valmac Industries, Inc."
Russellville and Dardanelle,
Arkansas on strike
Foodhandlers Local Union 425.

[4] Article XV of the collective bargaining agreements in effect at the Waldron and Pine Bluff plants provides:

> It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union.

[5] Article XIV of the Waldron and Pine Bluff contracts states:

> During the whole period this Agreement is in effect, the Company shall not lockout its employees and the Union shall not authorize or sanction any strike, stoppage, slow-down or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

[6] The jurisdiction of the District Court was predicated on Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a):

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Following an ex parte hearing before Judge Oren Harris, a temporary injunction was issued on July 2, 1974. After a subsequent hearing at which both parties were represented, a preliminary injunction issued on August 1, 1974, which barred the union from further picketing at Waldron and Pine Bluff and from carrying on concerted strike activity there. The parties, however, were not expressly ordered to submit their dispute to arbitration. The union appeals, asking us to decide whether the relief granted exceeds the purportedly narrow exception to the anti-injunction provisions of the Norris-LaGuardia Act set forth in *Boys Markets, supra.*

I

The issue presented here has caused division in the circuits. Under similar factual circumstances those jurusdictions which have held the court was without jurisdiction to enjoin the work stoppage have concluded that the work stoppage must be one which is "*over* a grievance which both parties are contractually bound to arbitrate," 398 U.S. at 254 (emphasis added), before the narrow exception recognized in *Boys Markets* can attach. *Buffalo Forge Co. v. United Steelworkers,* No. 74-2698 (2d Cir., May 1, 1975); *Amstar Corp. v. Amalgamated Meat Cutters,* 468 F.2d 1372 (5th Cir. 1972); *Carnation Co. v. Teamsters Local 949,* 86 LRRM 3012 (S.D. Tex. 1974); *General Cable Corp. v. IBEW Local 1644,* 331 F. Supp. 478 (D. Md. 1971); *Simplex Wire and Cable Co. v. Local 2208, IBEW,* 314 F. Supp. 885 (D. N.H. 1970). If this were not so, it is contended, any work stoppage would be subject to an injunction where the collective bargaining agreement contains a no-strike provision.

On the other hand, those jurisdictions which have approved injunctions where the work stoppage itself is the question to be arbitrated have stressed the dominant policy favoring the peaceful settlement of labor disputes by means of binding arbitration and have suggested that to limit the scope of *Boys Markets* to grievances entirely independent of the underlying work stoppage would leave the employer helpless to compel the union to honor its agreement to arbitrate rather than to strike. *Armco Steel Corp. v. UMW*, 505 F.2d 1129 (4th Cir. 1974); *Inland Steel Co. v. Local 1545, UMW*, 505 F.2d 293 (7th Cir. 1974); *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926*, 502 F.2d 321 (3d Cir.) (en banc), *cert. denied*, 95 S. Ct. 625 (1974); *Wilmington Shipping Co. v. Longshoremen*, 86 LRRM 2846 (4th Cir. 1974); *Pilot Freight Carriers, Inc. v. Teamsters Union*, 497 F.2d 311 (4th Cir.), *cert. denied*, 419 U.S. 869 (1974); *Monongahela Power Co. v. Local 2332, IBEW*, 484 F.2d 1209 (4th Cir. 1973); *Bethlehem Mines Corp. v. UMW*, 375 F. Supp. 980 (W.D. Pa. 1974); *Barnard College v. Transport Workers Union*, 372 F. Supp. 211 (S.D.N.Y. 1974); *General Cable Corp v. IBEW Local 1798*, 333 F. Supp. 331 (W.D. Tex. 1971); *cf. Northwestern Airlines, Inc v. Airline Pilots Association*, 442 F.2d 246 (8th Cir. 1970). *modified on rehearing*, 442 F.2d 251, *cert. denied*, 404 U.S. 871 (1971) (work stoppage caused by refusal to cross sister union's picket line held arbitrable dispute under Railway Labor Act). As the Third Circuit observed in a different context:

> The 'no-strike' clause is the quid pro quo which [the Company] obtained for agreeing to submit to compulsory arbitration, and the Union agreed to forbear from striking in order to require such arbitration. To allow the Union to abandon its remedy of arbitration in order to disregard the 'no-strike' clause would render the collective bargaining agreement illusory and would subvert the policy favoring the peaceful settlement of labor disputes by arbitration.
>
> *Avco Corp. v. Local 787, UAW*, 459 F.2d 968, 972 (3d Cir. 1972).

The congressional policy favoring arbitration as a means of resolving industrial disputes was firmly recognized in the *Steelworkers Trilogy*:[7]

> Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement.
>
> *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

In *Boys Markets, supra*, the Supreme Court recognized that the congressional policy favoring arbitration of labor disputes[8] would be frustrated unless the federal courts possessed the power to compel arbitration (1) where an agreement to arbitrate the dispute in question could be found (2) under circumstances in which an injunction would have been proper but for the provisions of the Norris-LaGuardia Act. 398 U.S. at 253-54. More recently, in *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974), the Supreme Court applied the "presumption of arbitrability," 414 U.S. at 379, to safety disputes, where such disputes are not excluded from the arbitration clause of the collective bargaining agreement. The Supreme Court found a no-strike obligation to be implied by the arbitration provision and held that the safety dispute in issue presented a substantial question of contract construction. Concluding that such premises were sufficient to support the issuance of an injunction barring a work stoppage which had arisen over the safety dispute, the

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[7] *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *Steelworkers v. American Mfg. Corp.*, 363 U.S. 564 (1960).

[8] *See* 29 U.S.C. § 173(d).

Court rejected any approach which would have allowed the union to make its own subjective evaluation of safety conditions in order to invoke a statutory exception to an implied no-strike agreement, saying:

> * * * Absent the most explicit statutory command, we are unwilling to conclude that Congress intended the public policy favoring arbitration and peaceful resolution of labor disputes to be circumvented by so slender a thread as subjective judgment, however honest it may be.
>
> 414 U.S. at 386.

In this case the union contends there was no violation of the collective bargaining agreement because Article XV specifically permits employees to refuse to pass through a picket line authorized by the union. The company, on the other hand, contends that the no-strike provisions of the contract preclude the union from using picket lines to cause a work stoppage. Therein lies the heart of the dispute, and disputes arising under the collective bargaining agreement are subject to arbitration. The binding arbitration provisions relate to any grievance "involving an interpretation, application or violation of [the] Agreement * * *." There can be little doubt that had the company protested the picket line before the work stoppage occurred the resulting dispute would have been subject to binding arbitration.[9] It makes little sense to argue that because the work stoppage precipitated the dispute it was not a work stoppage "over" a grievance which the parties were contractually bound

[9] Likewise, if the company attempted to discipline employees who honored the picket line, the union could file a grievance and compel the company to arbitrate. *See Bethlehem Mines Corp. v. UMW*, 375 F. Supp. 980, 983 (W.D. Pa. 1974). The company would have us ignore the authorized picket line clause and hold that the dispute was over the no-strike clause alone. We decline to adopt so broad an interpretation of *Boys Markets* or of *NAPA* and *Monongahela*, especially since the establishment of the picket lines is as much a part of the arbitrable dispute as the fact that employees honored it.

to arbitrate. We think the holdings in *NAPA* and *Monongahela* and their progeny are consistent with a congressional purpose to encourage settlement of disputes by arbitration, including situations in which purported exceptions to a no-strike clause under the collective bargaining agreement are in dispute. Injunctive relief, conditioned upon prompt[10] arbitration of the dispute, does not nullify the union's right to establish or honor a picket line; it "only suspends the exercise of the right until its existence is established by an arbitrator's decision." *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926 supra*, 502 F.2d at 324.

The teachings of the Supreme Court lead us to the conclusion that if (1) the dispute is arguably one which can be resolved by arbitration (we think it is) and (2) the dispute has not been excluded from the scope of the arbitration clause (we hold that it has not), an injunction is proper to safeguard arbitration as the method selected by the parties for the resolution of disputes, provided other common law principles of equity enumerated in *Boys Market, supra*, 398 U.S. at 254, are present.

II

The company, which had originally demanded arbitration, refused to go forward following the grant of the injunction, contending that the District Judge had "already decided" the arbitrable issue. The company thereby attempted to make capital out of the District Court's remark from the bench that "there is nothing between the union and the company to arbitrate as a grievance on either Waldron or Pine Bluff * * *." This assessment was error.

[10] We stress the need for promptness. Unless the District Court so conditions its order that arbitration must closely follow the issuance of the injunction, the economics of the situation rather than the merits of the dispute may decide the outcome, and the union may have been unfairly denied its right to engage in authorized activity. *Boys Markets* was not intended to permit such a result.

While an arbitrable dispute will support the issuance of an injunction where a no-strike provision is found or implied in a collective bargaining agreement and a work stoppage has occurred, it does not follow that the company may abandon its demand for arbitration upon obtaining injunctive relief. The *purpose* of the injunction, indeed its only justification as an exception to the Norris-LaGuardia Act provisions, is to suspend the work stoppage in order to permit the dispute to be resolved by means of arbitration. *Boys Markets* expressly requires the District Court to condition the issuance of its injunction upon compliance with an order to arbitrate. 398 U.S. at 254.[11]

In other respects, however, the District Court substantially applied the proper standard in determining that the issuance of an injunction would be appropriate "despite the Norris-LaGuardia Act."[12] The findings that the union was in apparent violation of the no-strike provisions, that the company had a substantial probability of success in its lawsuit and that the irreparable harm to the company outweighed any damages which the union might suffer as a result of the injunction are supported by the evidence and are not clearly erroneous. But this is not enough to underpin the injunction. The District Court must find the dispute arbitrable and condition the continuance of the injunction upon an express order to arbitrate. It was error to do otherwise. *Cf. Inland Steel Co. v. Local 1545, UMW, supra,* 505 F.2d at 300.

We therefore remand the case to the District Court with instructions to require the dispute be submitted to arbitration

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[11] The no-strike obligation is the *quid pro quo* for an agreement to arbitrate. *Boys Markets, Inc. v. Retail Clerks Local 770,* 398 U.S. 235, 248 (1970); *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 455 (1957). A willingness to arbitrate becomes a threshold requirement of one's seeking to enforce the corresponding part of the bargain.

[12] *Boys Markets, Inc. v. Retail Clerks Local 770,* 398 U.S. 235, 254 (1970).

within ten days following our mandate as a condition of its injunction, and to frame the issue for arbitration.[13]

While the passage of time has resulted in new collective bargaining agreements, the company's claim for monetary damages caused by the alleged breach remains unresolved. Liability thereunder must await the determination of the arbitrator. *See Drake Bakeries, Inc. v. Local 50, American Bakery Workers,* 370 U.S. 254 (1962).

Remanded for further proceedings in accordance with these instructions.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

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[13] In its July 12, 1974, letter the company framed the dispute in this way:

> On July 1, 1974, we previously requested that you take immediate action to discontinue the picketing and strike activity which was commenced at the Pine Bluff and Waldron plants on July 1, 1974. When the request was not honored, a Temporary Restraining Order was entered by the United States District Court.
>
> You are advised that the Company stands ready and willing to arbitrate in accordance with the terms of the Collective Bargaining Agreement covering the employees at those plants, any grievance which may have caused the work stoppage.
>
> The Company regards the work stoppage and strike activity of the Union and employees as a violation of Article XIV of each of the contracts. If you disagree then we demand that the matter be submitted to arbitration in accordance with Article V of each of the agreements.

The union framed the dispute in this way:

> Whether the honoring of picket lines established and authorized by Food Handlers Local 425 at plaintiff's Pine Bluff and Waldron, Arkansas, operations by employees of Plaintiff employed by it at each of those operations constituted a violation of the existing collective bargaining contract between plaintiff and Food Handlers Local 425 at each of those operations.

(4) ORDER DENYING PETITION FOR REHEARING EN BANC AND FOR REHEARING

United States Court of Appeals
for the Eighth Circuit

No. 74-1660 September Term, 1974

Valmac Industries, Inc.,
Appellee,

vs.

Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO; Jess Riley, Jerry McGee; Darlene Hartley; Bill Green; Benny Dollar and Sarah Carlisle,
Appellants.

Appeal from the United States District Court for the Eastern District of Arkansas.

The Court having considered petition for rehearing en banc filed by counsel for appellants and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

August 20, 1975

(5) NORRIS-LaGUARDIA ACT, 29 U.S.C. § 104

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as those terms are herein defined) from doing, whether single or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Mar. 23, 1932, c. 90, § 4, 47 Stat. 70.

(6) LABOR MANAGEMENT RELATIONS ACT OF 1947, AS AMENDED

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-647

FOOD HANDLERS LOCAL 425 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHERWORKMEN OF NORTH AMERICA, AFL-CIO, ET AL.,
Petitioner

VS.

VALMAC INDUSTRIES, INC.,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

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INDEX

CITATIONS

Cases: Page

CITATIONS—Continued

Page

IN THE

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VS.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit

OPINIONS BELOW, JURISDICTION AND STATUTORY PROVISIONS INVOLVED

The petition of Food Handlers Local 425 of the Amalgamated Meat Cutters and Butcherworkmen of North America, AFL-CIO sets out the opinion below, the jurisdiction of this Court, and the statutory provisions involved. (Petition 1-2; Appendix to Petition A-12—A-21.)[1]

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[1] References to the opinion below will be directed to the Appendix to the Petition and will be cited as "App. pp. ——." References to the Petition will be cited as "Pet. pp. ——."

QUESTION PRESENTED

Whether the Court of Appeals erred in affirming an injunction against a work stoppage pending arbitration of the underlying dispute where it concluded that: "(1) the dispute is arguably one which can be resolved by arbitration . . . (2) the dispute has not been excluded from the scope of the arbitration clause [of the governing collective bargaining agreement] . . ." and (3) the other, common law grounds enumerated in this Court's decision in *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970), had been met.

COUNTERSTATEMENT OF THE CASE

A concise statement of the facts of the case and its procedural history appears in the opinion of the court below. (App. pp. A-13—A-15)

In petitioner's description of "The Proceedings Below" (Pet. p. 6), as well as its statement of the "Question Presented" (Pet. p. 2), petitioner implies that the Eighth Circuit decided that the work stoppage in question was not " 'over' a grievance which the parties were contractually bound to arbitrate." (Pet. p. 6). In fact the Court of Appeals held directly to the contrary:

> In this case the union contends there was no violation of the collective bargaining agreement because Article XV specifically permits employees to refuse to pass through a picket line authorized by the union. The company, on the other hand, contends that the no-strike provisions of the contract preclude the union from using picket lines to cause a work stoppage. Therein lies the heart of the dispute, and disputes arising under the collective bargaining agreement are subject to arbitration . . . It makes little sense to argue that because the work stoppage precipitated the dispute it was not a work stoppage "over" a grievance which the parties were contractually bound to arbitrate. (App. pp. A-18—A-19).

Petitioner's "Statement of the Case" also ignores the Eighth Circuit's instruction that the district court, on remand, order arbitration of the dispute, within ten days of the issuance of the mandate, and frame the issue for arbitration. (App. pp. A-20—A-21). The Court of Appeals specifically noted that the "only justification" for injunctive relief under this Court's decision in *Boys Markets* "is to suspend the work stoppage in order to permit the dispute to be resolved by means of arbitration." (App. p. A-20).

REASONS FOR DENYING THE WRIT

I. There is No Division of Authority Among the Courts of Appeals with Respect to the Issue Decided Below.

This Court has granted a petition for a writ of certiorari to the Second Circuit Court of Appeals in *Buffalo Forge Co.* v. *United Steelworkers of America*, No. 75-339.[2] *Buffalo Forge* presents the narrow issue of whether one union's honoring of a picket line established by another union may be enjoined under the principles set forth by this Court in the *Boys Markets* decision.[3] It is recognized that there is an apparently irreconcilable conflict among the Courts of Appeals over this issue. In such cases as *Buffalo Forge Co.* v. *United Steelworkers of America*, 517 F.2d 1207 (2d Cir. 1975), the Second, Fifth and Sixth Circuits[4] have held the District Courts

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[2] 44 U.S.L.W. 3238 (October 21, 1975).

[3] *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970).

[4] *See* cases cited at Pet. p. 11, fn. 7.

are powerless to enjoin such a work stoppage since it is not "over a grievance which both parties are contractually bound to arbitrate." [5]

In such cases as *Inland Steel Co.* v. *UMWA Local 1545*, 505 F.2d 293 (7th Cir. 1974), the Third, Fourth and Seventh Circuits [6] have held that the dispute created by a work stoppage in violation of a no-strike provision constituted in itself a sufficient "grievance which both parties are . . . bound to arbitrate," and accordingly affirmed the grant of injunctive relief. Thus, the question on which the Courts of Appeals are divided is whether a dispute over the interpretation of a no-strike clause, standing alone, will support a *Boys Markets* injunction pending arbitration.

However, the present case raises the different and more complex issue of whether the grant of injunctive relief was properly affirmed by the Court of Appeals below upon an express finding that (1) there existed an arbitrable dispute between petitioner and respondent over the scope and interaction of a no-strike clause [7] *and* an

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[5] *Boys Markets, supra,* 398 U.S. at 254.

[6] Island Creek Coal Co. v. UMWA, 507 F.2d 650 (3d Cir.), *cert. denied,* —— U.S. ——, 44 U.S.L.W. 3206 (Oct. 6, 1975); *Armco Steel Corp.* v. *UMWA*, 505 F.2d 1129 (4th Cir., 1974), *cert. denied,* —— U.S. ——, 44 U.S.L.W. 3206 (Oct. 6, 1975); Inland Steel Co. v. UMWA Local 1545, 505 F.2d 293 (7th Cir. 1974); Monongahela Power Co. v. I.B.E.W. Local 2332, 484 F.2d 1209 (4th Cir. 1973). *See also,* Bethlehem Mines Corp. v. UMWA, 375 F. Supp. 980 (W.D. Pa. 1974); Barnard College v. Transport Workers Union, 372 F. Supp. 211 (S.D.N.Y. 1974); General Cable Corp. v. I.B.E.W. Local 1798, 333 F. Supp. 331 (W.D. Tex. 1971).

[7] The collective bargaining agreement effective between petitioner and respondent at the time of the subject dispute contained, at Article XIV, the following language:

No Strike—No Lockout

During the whole period this Agreement is in effect, the Company shall not lock out its employees and the Union shall not authorize or sanction any strike, stoppage, slowdown or suspension of work against the Company, except for failure of the other party to submit to the arbitration procedure as provided for in Article V of this Agreement, and only then upon forty-eight (48) hours written notice to the other party, and the other party's continued failure to submit to arbitration.

authorized picket line clause [8] in the applicable collective bargaining agreement; and (2) the dispute had not been excluded from the scope of the arbitration clause in that agreement.[9] Accordingly, a decision of this Court affirming the *Buffalo Forge* case would not be dispositive of the present case.

Further, there is no conflict among the decisions of those Courts of Appeals that have decided the issue raised by this case. None of the decisions cited by petitioner in support of its position involved the application or construction of an authorized picket line clause in a *Boys Markets* situation. In contrast, every Court of Appeals [10] that has decided the propriety of injunctive relief in a case such as this, where the applicable collective bargaining agreement did contain an authorized picket line provision, ruled that such relief is proper

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[8] The collective bargaining agreement also contained, at Article XV, the following provision:

Authorized Picket Line

It shall not be a violation of this Agreement for an employee to refuse to pass through a picket line authorized by this Union.

[9] The collective bargaining agreement also contained in Article V a detailed, four-step arbitration process for resolving any grievance complaints *of the union or the company* "involving an interpretation, application or violation of this Agreement . . . ."

[10] Valmac Industries, Inc. v. Food Handlers Local 425, 519 F.2d 263 (8th Cir. 1975); NAPA-Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321 (3d Cir.), *cert. denied,* 419 U.S. 1049 (1974); Wilmington Shipping Co. v. Int'l. Longshoremen's Assoc., —— F.2d ——, 86 LRRM 2846 (4th Cir.), *cert. denied,* 419 U.S. 1022 (1974); Pilot Freight Carriers, Inc. v. Teamsters Local 391, 497 F.2d 311 (4th Cir.), *cert. denied,* 419 U.S. 869 (1974).

under *Boys Markets*. As noted by the Third Circuit Court of Appeals, the opinions cited by petitioner in support of its position

> . . . *are clearly distinguishable. In none of the cited cases was there a contractual provision restricting the union's right to honor picket lines of other labor organizations.* Indeed, the district court in the *Simplex* case, *supra*, [*Simplex Wire & Cable Co.* v. *I.B.E.W. Local 1644*, 314 F. Supp. 885 (D.N.H. 1970)] specifically noted the omission of any reference to the subject in the contract between the parties in that case.[11]

Similarly, in *Pilot Freight Carriers, Inc.* v. *Teamsters Local 391*,[12] on facts remarkably similar to those in the present case, the Fourth Circuit Court of Appeals based its affirmance of the grant of injunctive relief on the following grounds:

> The relationship between the no strike clause and the clause allowing individual employees to refuse crossing a primary picket line was, we think, an arbitrable matter, as is Pilot's contention about the underlying dispute, whether the local union or national union had directed or influenced concerted activity not to cross the picket line, as opposed to individual employees' decisions not to cross it . . . . *We think the parties intended to submit disputes of this nature to arbitration, and, in any event, we must construe the agreement liberally in favor of arbitration.*[13]

It is submitted that, whatever the validity of the *Buffalo Forge* line of cases, petitioner and respondents have

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[11] NAPA-Pittsburgh, Inc., *supra*, 502 F.2d 321 at 324. [Emphasis added.]

[12] 497 F.2d 311 (4th Cir.), *cert. denied*, 419 U.S. 869 (1974).

[13] 497 F.2d 311 at 313 [Emphasis added].

provided in their collective bargaining agreement that the present dispute is to be resolved by arbitration. Such an intent is consistent with the congressional policy in favor of arbitration recognized by this Court in the *Steelworkers Trilogy*,[14] and the "presumption of arbitrability" applied by this Court in *Gateway Coal Co.* v. *United Mine Workers*.[15] Since the subject matter of the dispute between petitioner and respondent is dealt with by the language of the Agreement itself, it follows that such dispute must be resolved by the dispute procedures provided by the Agreement for that express purpose.

Accordingly, since all Courts of Appeals that have dealt with the issues presented by this case are in agreement concerning the propriety of granting injunctive relief under *Boys Markets*, there is no "unalterable conflict" among the circuits, and the petition for certiorari presents no issue which warrants further review by this Court.

II. The Court Below Correctly Construed and Applied Federal Labor Policy in Accordance with this Court's Holding in Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970).

Respondent adopts and affirms herein the argument of the petitioner, Buffalo Forge Co., set forth in its Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Buffalo Forge Co.* v. *United Steelworkers of America*, No. 75-339, at pages 7-12, which petition was granted by this Court.[16]

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[14] United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

[15] 414 U.S. 368, 379 (1974).

[16] 44 U.S.L.W. 3238, (October 21, 1975).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Court should deny the petition for a writ of certiorari. In the alternative, if this Court should feel that the decision of the Court of Appeals below in this case is in irreconcilable conflict with the decisions of other Courts of Appeals, it is requested that this Court hold the petition in abeyance pending the decision of the Court in the *Buffalo Forge* case presently before the Court.

Respectfully submitted,

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